IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 2339 OF 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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CHAURABEN KARSANBHAI & ORS. - Appellant(s)
Versus
DRIVER HARIJAN GOVIND MERAMAN & ORS. - Respondent(s)

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Appearance :
Shri Bhargav Hasurkar for Appellant(s) : 1 - 4.
None for Respondent(s) : 1 - 2.
Shri Rajni H. Mehta for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/07/2007

ORAL JUDGMENT

The appellants - widow, minor daughter and parents of the deceased Karsan, being partly aggrieved by the order/award dated 15th

July, 1986 passed by the learned Motor Accident Claims Tribunal (Auxiliary), Junagadh in M.A.C.P. No.203 of 1994, are before this Court seeking enhancement in the compensation amount and further relief that this Court should hold that the Insurance Company is answerable to the award made in favour of the appellants-claimants.

2. The appellants have come to this Court with a submission that the deceased Karsan was working as a Cleaner on the truck belonging to Bhimji Virji and that on the fateful day, he was travelling in the truck as a Cleaner in discharge of his duties.

3. As the Insurance Company and other respondents have not filed any cross appeal or cross objections, it is not necessary for this Court to refer to the facts relating to the cause of the accident, rashness and negligence and liability of the driver. This Court shall confine itself to the question that whether the appellants are entitled to enhancement in the compensation with a direction that the Insurance Company is also answerable to the award made in their favour.

4. From the award made by the learned Tribunal below, it clearly appears that the widow and minor daughter of the deceased Karsan had filed M.A.C.P. 186 of 1984 with a plea that the deceased was travelling in the motor vehicle as an owner of the goods carried with him

and that he had paid a sum of Rs.10/- towards hire charges. The said claim petition came to be withdrawn and it is not known as to whether such claim petition was withdrawn with liberty to file yet another claim petition or with a submission that the claim was to be defeated because of some defect or because of defect which was in the nature of formal defect or because of wrong legal advise.

5. If such pleadings are not available, then, the only conclusion which this Court can draw is that the earlier claim petition, being M.A.C.P. No.186 of 1984, was withdrawn without any reservation or liberty. The appellant Nos.1 and 2 of the present case were the claimants of the said case, therefore, at their instance, this appeal cannot be held maintainable. However, I would not interfere in the matter because yet the other side has not challenged the maintainability of the petition on the ground of earlier withdrawal of the claim petition.

6. So far as the question of compensation is concerned, in the opinion of this Court, the learned Tribunal below did not err in awarding a sum of Rs.85,000/- in favour of four claimants, nor it erred in holding that the deceased was not working as a cleaner on the said truck. If appellant Nos.1 and 2 have joined the parents of the deceased as Claimant Nos.3 and 4, then, the Claimants Nos.3 and 4 would be bound by certain admissions made by Claimant Nos.1 and 2. If in the earlier

matter, the claim was based upon the pleadings that the deceased was travelling in the vehicle as an owner of the goods, then, these claimants cannot be allowed to say with the change of stand that the deceased was travelling in the vehicle as a Cleaner.

7. The Court below was justified in holding that the deceased was not working as a Cleaner. Once it is held that the deceased was not travelling in the vehicle as a Cleaner or workman, then, the Insurance Company cannot be held liable.

8. On both the counts, I find no reason to interfere. The appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**